State of Gujarat and Another

Vs

Hon'ble High Court of Gujarat

Criminal Appeal No. 308 of 1986

(CJI M. M. Punchhi, K.T. Thomas, D.P. Wadhwa JJ)

24.09.1998

ORDER

M. M. PUNCHHI, C.J. –

1. While concluding his opinion my learned brother K. T. Thomas, J. has made certain directions to the respective Governments to which conclusion my learned brother, D. P. Wadhwa, J. in his separate opinion has accorded assent. I too would accord approval to those directions and order disposal of these appeals and writ petitions.

JUDGMENTS

THOMAS, J. -

2. A delicate issue requiring a very circumspective approach is mooted before us : whether prisoners who are required to do labour as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under the minimum wages law. We have before us appeals filed by some State Governments challenging the judgments rendered by the respective High Courts which in principle upheld the contention that denial of wages at such rates would fringe on infringement of the constitutional protection against exaction of forced labour.

3. Shri Rajeev Dhavan, Senior Counsel put before us the viewpoints of the National Human Rights Commission (NHRC) which favours the principle that prisoners should be paid wages at the rates prescribed under the minimum wages law. On the request of this Court, Shri Kapil Sibal, Senior Counsel addressed arguments as amicus curiae. During the course of hearing, we felt the need to hear the Attorney General for India on this important question. Shri Soli J. Sorabjee, Attorney General, in response to our request addressed arguments substantially in tune with the approach made by the other two Senior Counsel. We are grateful to all the learned counsel who assisted us with their valuable contributions.

4. The State Governments which preferred the appeals are generally in agreement with the view that prisoners should be paid wages and that the present rates of wages paid to them are too meagre and hence they must be enhanced. To what extent is the plank on which the State Governments contested these causes by challenging the judgments under appeals ?

5. A Division Bench of the High Court of Kerala (Subramonian Poti, C.J. and Chandrasekhara Menon, J.) in the decision entitled as Prison Reforms Enhancement of Wages of Prisoners, In re (1983 KLT 512) seems to have taken the lead in this area and suggested that the wages given to

prisoners must be on a par with the wages fixed under the Minimum Wages Act, 1948 (for short MW Act) and the request to deduct the cost for providing food and clothes to the prisoner from such wages was spurned down. The Division Bench directed the State Government to design a just and reasonable wage structure for the inmates of the prisons who are employed to do labour, and in the meanwhile to pay the prisoners at the rate of Rs. 8 per day until the Government is able to decide the appropriate wages to be paid to such prisoners. Learned counsel for the State submitted before us that the challenge is limited to the question whether deduction of cost of food and clothes is permissible.

6. The Gujarat High Court adopted the same stand as the Division Bench of Kerala had taken in the decision cited Prison Reforms (1983 KLT 512). The judgment was rendered by a Division Bench headed by P. Subramonian Poti, C.J. and the reasons adverted in the decision of the Kerala High Court were reiterated.

7. A Single Judge of the Rajasthan High Court suggested that the State Government shall appoint a Commission to go into the entire wage structure for the convicted prisoners, and to lay down rules, and in the meanwhile directed the State to pay to the prisoners at the rates tentatively fixed by the learned Judge. A Division Bench confirmed the said judgment which is now challenged by the State of Rajasthan.

8. A Division Bench of the High Court of Himachal Pradesh (Bhawani Singh and Devendra Gupta, JJ.) vide Gurdev Singh v. State (AIR 1992 HP 76 : 1992 Cri LJ 2542 (HP)) directed the State Government to undertake comprehensive jail reforms and appoint a high-powered committee within a year to look into the various aspects including payment of reasonable minimum wages to the prisoners. At the same time, the Division Bench directed that "the provisions permitting realisation of maintenance charges from the prisoners be dispensed with forthwith and no future recovery be made in this behalf". The State of Himachal Pradesh has now challenged the said judgment before us.

9. All the above appeals and two writ petitions filed by some prisoners (or on their behalf), for directing the State Government concerned to enhance the wages payable to the prisoners have been heard by us in extenso.

10. Indian prisons are now crammed with prisoners. In many jails they are so overcrowded that the amenities designed for a far less number of inmates are now being shared by a disproportionately large number of internees therein, e.g., in Bihar jails, as against a prison capacity of 26,300 the actual number of internees during the first half of 1996 was 36,700. In Madhya Pradesh, the figure is 27,300 as against a prison capacity of 17,720. Even in Delhi, it has crossed 8300 as against a prison capacity of 2400.

11. There are principally two categories of prisoners : (1) undertrial prisoners and (2) convicted prisoners. (Besides them, there are those detained as a preventive measure, and those undergoing detention for default of payment of fine.) Those in the first category cannot be required to do any labour while they remain in jail, but they far outnumber all the remaining categories put together. Statistics show that in most of the States, the undertrial prisoners have an overwhelming majority when compared with the number of convicted prisoners, e.g., undertrial prisoners in Bihar jails are 84.04% of the total inmates of the jails. In U.P., the percentage is 85.17. In Madhya Pradesh, it is 64.22% and in most other States, the percentage of undertrial prisoners is above 50.

12. Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. Section 53 of the Indian Penal Code which falls under the chapter entitled "Of Punishments" vivisects punishments into five categories, of which the category "imprisonment" has been further sub-divided into two sub-categories as "rigorous" and "simple". Rigorous imprisonment is explained as "imprisonment with hard labour". Section 60 of the Indian Penal Code confers power on a sentencing court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple". The sentence of "imprisonment for life" tagged along with a number of offences delineated in the Indian Penal Code is interpreted as "rigorous imprisonment for life" and not simple imprisonment. (Vide the decisions of the Constitution Bench in Gopal Vinayak Godse v. State of Maharashtra (AIR 1961 SC 600 : (1961) 3 SCR 440) and Naib Singh v. State of Punjab ((1983) 2 SCC 454 : 1983 SCC (Cri) 536 : AIR 1983 SC 855).)

13. A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. Section 374 of the IPC makes imposition of work on an unwilling person as an offence. The section reads thus :

> "374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

14. But the jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court. No prisoner sentenced to rigorous imprisonment can conceivably complain that the jail authorities committed the offence under Section 374 of the IPC by compelling him to do work during the term of his imprisonment. So the task to do labour can be imposed on a prisoner only if he has been sentenced to rigorous imprisonment. Neither the undertrial internees nor the detainees with simple imprisonment nor even detenus who are kept in jails as a preventive measure can be asked to do manual work during their prison term. It is a different matter that he is allowed to do it at his request.

15. Two profiles emerge from the above discussion. First is, a vast majority of prisoners are not concerned about the wages for the labour in jails. It is only for a small section of the detainees that this exercise would benefit. Second is that hard labour is enforced on those sentenced to rigorous imprisonment by the sanction of law and the jail authorities cannot disobey the directions of the court which passed the sentence.

16. The first contention before us was that when hard labour is made a part of punishment as lawfully imposed, can it be equated with the normal employer-employee phenomenon so as to entitle the prisoner to the social and legislative benefits which a free employee gets outside the walls of the prison. The picture endeavoured to be portrayed before us, in support of the contention, is that in a country like ours where unemployment among youth is so rampant and acute, a life assuring a reasonably good living and a minimum income at the rates fixed for employees of industrial and commercial establishments would provide great incentive to the unemployed youth to resort to crimes for carving out a route to the jails, albeit under conditions of incarceration. This would gallop the crime rates upward as many among the unemployed may feel tempted to avail themselves of such advantages despite the disadvantages, apprehends the aforesaid school of thought.

17. But that argument will not and should not deter us from considering minimum wages for prisoners, for the average individual would abhor incarceration in jails, whatever comfort and monetary benefit it may provide to him. The reality is that even those inside the jails, by and large, are looking forward to the day of their release so as to get their personal freedom restored so that they can move about freely in society, live with their beloveds and enjoy the free atmosphere of life. Most of them are in certitude of the precise number of months, weeks and days they had already spent in jails as well as the number of days they secured by way of remissions and also the remaining period they have to continue in jails before attaining the cherished exit from the iron gates of the bastions.

18. Learned Chief Justice P. Subramonion Poti, speaking for the Division Bench of the Kerala High Court, in the decision cited above (Prison Reforms (1983 KLT 512)) has frescoed a picture of reality that :

> "Many accelerate their release by purchasing remission parting with the few paise that they earn by way of wages and by donating blood in the hope that this process takes them nearer to the day when they can be back in the affectionate atmosphere at home. The most deterrent factor in imprisonment is really the fact of curtailment of personal freedom. It may not be necessary to make it harsh and inhuman in order to render the sentence of imprisonment a deterrent."

19. Article 23 of the Constitution prohibits "forced labour" and mandates that any contravention of such prohibition shall be an offence punishable in accordance with law. That article read thus :

> "23. Prohibition of traffic in human beings and forced labour. - (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not any discrimination on grounds only of religion, race, caste or class or any of them."

20. Articles 23 and 24 are the only two provisions subsumed under the heading "Right against exploitation". The latter provision prohibits children being employed in a factory or mine or other hazardous employments. In the former, three unsocial practices are prohibited : (1) traffic in human beings, (2) begar and (3) similar forms of forced labour. Traffic in human beings means trade in human beings. The ban against traffic in human beings is absolute while prohibition against "forced labour" is made subject to one exception, i.e., the State is permitted to impose compulsory service if such service is necessary for a public purpose. Otherwise the ban against forced labour is also absolute. The expression "forced labour" seems to be collocated with the word "begar". The word "begar" was of Indian origin and has, in the due course of time gained entry into the English vocabulary. That word is understood to be the labour or service which a person is forced to give without receiving any remuneration for it. It was so held by a Division Bench of the Bombay High Court in S. Vasudevan v. S. D. Mital (AIR 1962 53 : 63 Bom LR 774) and that was approved by this Court in People's Union for Democratic Rights v. Union of India ((1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473).

21. When the Constitution qualified "forced labour" by associating it with other words "begar and

other similar forms" it was not for shrinking the scope of the prohibition to some types of forced labour. Learned Judges in People's Union for Democratic Rights ((1982) 3 SCC 235 : 1983 SCC (L&S) 275 : AIR 1982 SC 143) have observed that forced labour may arise in several ways, it may be physical force, it may be force exerted through a legal provision such as the provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as force. The Bench observed thus : (SCC pp. 259-60, para 14)

> "We are, therefore, of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23."

We are in respectful agreement with the aforesaid view.

22. Would the Constitution-makers have thought the imposition of hard labour on the convicted prisoners is not included within the concept of "forced labour" envisaged in Article 23 ? In many other Republican Constitutions, protection against forced labour is subjected to the exception that hard labour imposed on convicted persons would not be "forced labour".

23. In the Constitution of the United States of America, Section 1 of the Thirteenth Amendment, 1865 contains the following provision :

> "(i) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

24. Same exception is seen incorporated in the analogous provisions of the Constitutions of a large number of other Republics. For example, Burma, Japan, Cyprus, the Republic of Korea, Malaysia, Nepal, Pakistan, etc. To cite one example, Article 19 of the Constitution of Burma, 1948 read thus :

> "(i) Traffic in human beings, and
>
> (ii) Forced labour in any form and involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall be prohibited.
>
> Explanation. - Nothing in this section shall prevent the State from imposing compulsory service for public purpose without any discrimination on grounds of birth, race, religion or class."

25. In this connection it is worthy of notice that during the making of our Constitution, the same exception was thought of in the original draft. Clause 11 of the chapter for fundamental rights as adopted by the Advisory Committee read like this :

> "11. (a) Traffic in human beings, and
>
> (b) forced labour in any form including begar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

> are hereby prohibited and any contravention of this prohibition shall be an offence.
>
> Explanation. - Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

26. After a full debate, the Constituent Assembly adopted clause 11 by chiselling it down to the form in which Article 23 of the Constitution is now shaped (vide pp. 252 to 257 of The Framing of India's Constitution - A Study by B. Shiva Rao). B. N. Ambedkar in his summing up remarks said in the Constituent Assembly that the exception envisaged in sub-clause (2) regarding "public purposes" is very wide enough to contain all such exceptional conditions. Thus it is apparently clear that imposition of forced labour on a prisoner will get protection from the ban under Article 23 of the Constitution only if it can be justified as a necessity to achieve some public purpose.

27. So the question now to be considered is, whether such compulsory labour can be justified by testing it on the touchstone of "public purpose". What public purpose can possibly be served by exacting such labour work from convicted prisoners ? It is said that hard labour imposed on the proved offenders would have a deterrent effect against others from committing crimes and thus society would, to that extent, be protected from perpetration of criminal offences by others.

28. This is the context to consider whether deterrence is the main objective for punishment. Among the conflicting theories for punishment, modern criminologists are highlighting the reformative effect on the punished criminal as the most germane aspect. Jereme Bentham who propounded the theory of deterrence is now considered as the apostle of a conservative old school of thought. The retributive theory of punishment has wanted into a relic of primitivity because civilised society has realised that retribution cannot solve the problem of escalating criminal offences. Crime is now considered to be a problem of social hygiene. That modern diagnosis made by criminologists is now causing a sea change to the whole approach towards crime and punishment. The emphasis involved in punishment has now been transposed from retribution to cure and reform so that the original man, who was mentally healthy, can be recreated from the ailing criminal.

29. To Mother Teresa, "the prisoner is Jesus to me". The world-renowned philanthropist as she was, would have been very much inspired by the scriptural words pronounced by Lord Jesus as quoted in the gospel according to Matthew (Chapter 25 verse 36) :

> "Then the King will say to those on his right hand - 'Come ye, who are blessed by my Father in Heaven, for, I was ... in prison and you came to see me'. To those on the left the King said : 'Go away from me you cursed ones, for, I was ... in prison and you did not visit me.'"

30. It is grand transformation recorded in the epics that the hunter Valmiki turned out to be a poet of eternal recognition. If the powers which brought about that transformation had remained inactive, the world would have been poorer without the great epic "Ramayana". History is replete with instances of bad persons transforming into men of great usefulness to humanity. The causes which would have influenced such swing may be of various kinds. Forces which condemn a prisoner and consign him to the cell as a case of irredeemable character belong to the pessimistic society which lacks the vision to see the innate good in man.

31. The theory of reformation through punishment is grounded on the sublime philosophy that every

man is born good but circumstances transform him into a criminal. The aphorism that "if every saint has a past every sinner has a future" is a tested philosophy concerning human life. V. R. Krishna Iyer, J. has taken pains to ornately fresco the reformative profile of the principles of sentencing in Mohd. Giasuddin v. State of A.P. ((1977) 3 SCC 287 : 1977 SCC (Cri) 496). The following passage deserves special mention in this context : (SCC pp. 289-90, para 7)

> "If the psychic perspective and the spiritual insight we have tried to project is valid, the police bully and the prison drill cannot 'minister to a mind diseased', nor tone down the tension, release the repression, unbend the perversion, each of which shows up as debased deviance, violent vice and behavioural turpitude. It is truism, often forgotten in the hidden vendetta in human bosoms,, that barbarity breeds barbarity, and injury recoils as injury, so that if healing the mentally or morally maimed or malformed man (found guilty) is the goal, awakening the inner being, more than torturing through exterior compulsions, holds out better curative hopes."

32. Reformation should hence be the dominant objective of a punishment and during incarceration, every effort should be made to recreate the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into a handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigours of hard labour during the period of his jail life. Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose.

33. A reformative approach is now very much intertwined with rehabilitative aspect to a convicted prisoner. It is hence a reasonable conclusion from the above discussion that a directive from the court under the authority of law to subject a convicted person (who was sentenced to rigorous imprisonment) to compulsory manual labour gets legal protection under the exemption provided in clause (2) of Article 23 of the Constitution because it serves a public purpose.

34. All the learned counsel who argued before us are in unison in agreeing to the proposition that no prisoner can be asked to do labour free of wages. It is not only the legal right of a workman to have wages for the work, it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar.

35. It is only appropriate in this context to remind ourselves of what Chandrachud, J. (as the learned Chief Justice then was) has observed in D. Bhuvan Mohan Patnaik v. State of A.P. ((1975) 3 SCC 185 : 1974 SCC (Cri) 803) : (SCC pp. 186-87, para 6)

> "6. Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to 'practise' a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

36. Having thus found that like any other workman, a prisoner is also entitled to wages for his work, the question next to be considered is - what is the rate at which the prisoners should be paid for their work ? We have no doubt that paying a pittance to them is virtually paying nothing. Even if the amount paid to them is a little more than a nominal sum, the resultant position would remain the same. The Government of India had set up in 1980 a committee on jail reforms under the Chairmanship of Mr. Justice A. N. Mulla, a retired Judge of the Allahabad High Court. The report submitted by the said Committee is known as the "Mulla Committee Report". It contains a lot of very valuable suggestions, among which the following are contextually apposite :

> "All prisoners under sentence should be required to work subject to their physical and metal fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, their training for work, the forming of better work habits, and of preventing idleness and disorder ....
>
> Punitive, repressive and afflictive work in any form should not be given to prisoners. Work should not become a drudgery and a meaningless prison activity. Work and training programmes should be treated as important avenues of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in the free community ....
>
> Rates of wages should be fair and equitable and not merely nominal or paltry. These rates should be standardised so as to achieve a broad uniformity in the wage system in all the prisons in each State and Union Territory."

37. While considering the quantum of wages payable to the prisoners, we are persuaded to take into account the contemporary legislative exercises on wages. Minimum wages law has now come to stay. This Court has held that minimum wage which is sufficient to meet the bare physical needs of a workman and his family irrespective of the paying capacity of the industry must be something more than subsistence wage which may be sufficient to cover the bare physical needs of the worker and his family including education, medical needs, amenities adequate for preservation of his efficiency. (Express Newspaper (P) Ltd. v. Union of India (AIR 1958 SC 578 : 1959 SCR 12 : (1961) 1 LLJ 339).)

38. Several guidelines have been provided by the legislature for fixing the rates of minimum wages and the need to make periodical revisions. Section 3 of the MW Act enjoins a statutory duty on the appropriate Government to fix minimum rates of wages payable to employees employed in an employment and to review the rates of wages so fixed at such intervals as the Government may think fit but not exceeding five years. Section 5 of the MW Act provides that in fixing minimum rates of wages in respect of the scheduled employment for the first time or in revising such rates, the Government shall appoint committees to hold enquiries and advise the Government in respect of such fixation. Alternatively, the Government is obliged to publish it proposals. Fixation or revision of minimum wages can be made only in consideration of the advice of the Committee and the representations received about it.

39. The State of Kerala in the appeal petition has expressed objection to pay the prisoners at the rates fixed as per MW law. But during arguments, learned counsel for the State submitted that the Government is willing to pay the prisoners wages at the said rates after deducting a certain percentage therefrom which represents the amount needed for the food and clothes supplied to the

prisoners. Such a plea for deduction was rejected by the High Courts, mainly on the premise that the obligation to provide food and clothes to the prisoners is the inherent obligation of the State on account of the very fact of their internment in prisons. The Division Bench of the High Court of Himachal Pradesh spurned down the aforesaid plea made on behalf of the State. Learned Judges have quoted from the Full Bench decision of the Gujarat High Court in Jail Reforms Committee v. State of Gujarat ((1985) Cri. Ref. No. 2 of 1984, dt. 31-1-1985 (Guj) (FB)) as follows : (1992 Cri LJ at p. 2559)

> "Undertrials are in custody in jails and sub-jails. They are not to do any work nevertheless they have to be fed and clothed. There are detenus under the laws of preventive detention who are also provided with food and clothing in jails without any return by way of work. There are prisoners sentenced to rigorous imprisonment who are sick and are unable to do work and they have necessarily to be fed. The cannot be told that since they do not work, they will not be fed. Even those who are able to work and who could be compelled to do labour may not be given labour due to absence of work as the reply-affidavit of the State Government shows. It mentions that at times, the sales of produce manufactured in jails are poor and then many go without work. It cannot be said that they will not be fed when there is no work. These would illustrate beyond doubt that feeding of a prisoner is a responsibility of those who keep the prisoner in custody irrespective of any return from him. It is so not only with human beings, but even animals. When they are not allowed to be free, they have to be fed. It will be uncivilised, if not cruel, to extract from such prisoners the return for the food and clothing supplied to them, not food and clothing of their choice, not food and clothing of excellence, but only a bare subsistence which any authority that keeps another in custody and retains must necessarily meet as a compulsory obligation. If the prisoners' wages is appropriated for the food, naturally the prisoner must have a choice of saying no and making his own choice of the food. That cannot be the case."

40. It is true that the State Government has the obligation to bear the expenses needed for providing food and clothes and other amenities to every prisoner, whether his detention is during the post-conviction period or the pre-conviction period as undertrial prisoner or has been preventively detained or is interned as a consequence of defaulting payment of fine imposed as punishment. If that is the only angle through which this question has to be looked at, there is, perhaps, a point to castigate deduction of the amount spent on food and clothes of a prisoner from the minimum wages rate. But the issue has to be looked at from three other angles also.

41. First is this, if wages at the rates fixed under the MW Act are paid to prisoner without making any such deduction, its net effect would be that he gets wages apparently moire than the emoluments of a workman who does the same type of work outside the jail. This is because the latter has to meet his expenses for food and clothes from the minimum wages paid to him.

42. The second angle is, the Government which has to pay wages to the prisoner has the additional liability to supply clothes and food to him because the Government has the duty, willy-nilly, to keep a convicted person in prison during such term as the court sentences him to imprisonment. It is the taxpayer's money which the Government is expending for keeping the prisoner inside the jail by providing him food and clothes and other amenities. It is not because the Government is happy to do it or is looking forward to do it. It is a legal compulsion on the Government. But its incidence is on the common man's coffer.

43. The third angle, and it is very important for this purpose, is that even the MW Act permits the employer to make deductions of certain kinds from the wages of an employed person. Section 12 of the Act permits him to make such deductions as may be authorised and subject to such conditions as may be prescribed by rules. The Minimum Wages (Central) Rules contain the items of such deductions which are permissible. Among such items, the following two are pertinent : (1) deductions for house accommodation supplied by the employer (2) deductions for such amenities and services supplied by the employer as the Government may authorise. Thus deduction of cost of clothes and food supplied to an employee from his wages is not inconsistent with the legislative policy.

44. When all aspects are considered, we are inclined to think that the request of the Government to permit them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. There is nothing uncivilised or unsociable in it. But the Government cannot deduct any substantial portion from the wages on that account. The Government can arrive at the reasonable percentage to be deducted from the minimum wages taking into account the average amount which the Government is spending per prisoner for providing food, clothes and other amenities to him.

45. We wish to say something more in this connection. We are told that the practice followed in many States, either by virtue of the jail rules or by convention, is that a portion of the money earned by the prisoner is sent to the dependents of the prisoner himself and the balance, after deducting the amount expended by him for his extra expenses, is preserved to be disbursed to him at the time of his release.

46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependents of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

47. Restorative and reparative theories have developed from the aforesaid thinking. In the Oxford Handbook of Criminology, Andrew Ashworth, Professor of Oxford University Centre for Criminological Research has contributed the following instructive passage :

> "Restorative and Reparative Theories. - These are not theories of punishment, rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred (see e.g., Wright 1991), although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders to reintegrate them into the community. Such theories therefore tend to act on a behavioural premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State.

> Legal systems based on a restorative rationale are rare, but the increasing tendency to insert victim-orientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland's observation that 'institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups'."

48. Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence. But in practice, the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long-term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine along is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims.

49. It is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose, we are prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300-A of the Constitution. Hence we suggest that the State concerned may bring about a legislation for that purpose.

50. The above discussion leads to the following conclusions :

> (1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
>
> (2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.
>
> (3) It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a wage-fixation body for making recommendations. We direct each State to do so as early as possible.
>
> (4) Until the State Government takes any decision on such recommendations, every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose, we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.
>
> (5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

51. The appeals and the writ petitions are disposed of in the above terms. The Registry will despatch a copy of this judgment to the Chief Secretary to every State Government.

D. P. WADHWA, J. -

52. I agree with the directions issued by my learned brother, K. T. Thomas, J. I, however, find myself unable to subscribe to the view that putting a prisoner to hard labour and not paying wages to him would be violative of clause (1) of Article 23 of the Constitution and this violation is saved only under clause (2) thereof which provides that nothing in Article 23 shall prevent the State from imposing compulsory service for public purposes.

53. This is yet another decision in a string of decisions of this Court dealing with prison reforms and prison administration, the last one being Rama Murthy v. State of Karnataka ((1997) 2 SCC 642 : 1997 SCC (Cri) 386) - judgment delivered on 23-12-1996. In the case of Rama Murthy ((1997) 2 SCC 642 : 1997 SCC (Cri) 386) this court while considering various earlier decisions dealt with the problems of overcrowding, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, deficiency in communication, streamlining of jail visits, management of open-air prisons and delay in trials of inmates in the prisons. After listing all these causes, this Court issued directions to the States, the Union Territories and to the Central Government as to why they should not act on the causes detailed in the judgment. Notices were issued to show cause within three months and the matter has been kept for further proceedings. The case of Rama Murthy ((1997) 2 SCC 642 : 1997 SCC (Cri) 386) has been tagged with the cases now before us, which deal with the question of wages payable to the prisoners sentenced to hard labour.

54. The state of Kerala aggrieved by the judgment dated 13-4-1983 (1983 KLT 512) of the Division Bench of the Kerala High Court, sought special leave to appeal, which was granted by the order dated 27-5-1983, and the judgment stayed. By the impugned judgment, the Kerala High Court gave the following directions :

> "We therefore direct that forthwith the Government make arrangements to pay to the inmates of the prisons, who are put to work, wages at Rs. 8 per day, part of which they may utilise for themselves, part of which they could arrange to remit to their dependents and part accumulated to be paid to them at the time of release. Rule 384 of the Kerala Prison Rules may need immediate attention in the light of this judgment and we hope the Government will look into it forthwith."

The Kerala High Court was considering the question of justification for giving direction as to wages to be paid to the prisoners in the jails in the State of Kerala. The issue, in fact, was whether in law the claim of the prisoners in jails for proper remuneration for the work they are compelled to do not on their own volition, but because of the compulsion of the Prison Rules is enforceable by the Court's mandate. The High Court examined the provisions of the Indian Penal Code (IPC) - Sections 53 and 55, providing for rigorous imprisonment, which is imprisonment with hard labour. It also examined the Travancore-Cochin Prisons Act, 1950, Prisons Act (9 of 1894) and the Kerala Prison Rules. These Rules, it would appear, provide for payment of wages to the prisoners. Under Rule 384 which deals with utilization of wages, one-third of the wages earned by the prisoner is meant for his personal needs in the jail, one-third is sent to the family for its need and the remaining one-third for being paid to the prisoner on his release. One-third to be utilized by the prisoner in jail, is given to him in the form of coupons for making purchases from the jail canteen. He could also purchase remission from the wages so paid to him. Prisoners sentenced to simple imprisonment are given

work only on the basis of their request and subject to their physical fitness.

55. On the pleas raised in the writ petition, the Kerala High Court framed the following question to be answered by it which it said it was called upon to consider in this case :

> "Is a prisoner who has to undergo his term of sentence in jail entitled, as of right, to claim that he should be paid wages for his out-turn of work ? Is he entitled to insist that the wages paid should not be illusory but reasonable ? Can he complain to this Court that his personal liberty is infringed and his rights eroded by compulsion to do hard labour practically free ? Is a court called upon to grant relief in such a case ? If so, what should be the approach of the Court in the circumstances ?"

After detailed discussion on various aspects including the object of punishment, the reformatory theory and other such aspects including the advantages of giving fair wages to prisoners, the High Court gave the directions as aforesaid. The Court also examined the provisions of Article 23 of the Constitution with reference to the decision of this Court in People's Union for Democratic Rights v. Union of India ((1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473) and held that it was the mandate of the Constitution that the prisoners are to be paid wages for the work done by them. Then the Court examined the question of what would be the reasonable wages and came to the conclusion that it would be Rs. 8 per day, which would be on ad hoc basis subject to any alteration later when as a result of further study, research and assessment the Government was able to decide upon appropriate wages of the prisoners.

56. This Court, after having issued notice in the special leave petition, also directed that the State of Kerala undertook that in the event of its failure in the appeal, the amount due to various prisoners could be paid to them including those, who had been released since the date of the impugned judgment of the High Court.

57. Judgment of the Kerala High Court was delivered by Subramonian Poti, Ag. C.J. When Subramonian Poti, J. was transferred to the Gujarat High Court as C.J., similar question was also raised in that High Court. The Full Bench of the Gujarat High Court gave judgment dated 31-1-1985 on similar lines as that of the Kerala High Court judgment and that judgment was also delivered by Subramonian Poti, C.J. Aggrieved by that judgment, the State of Gujarat also came to this Court. Judgment of the Gujarat High Court quotes various passages from the judgment of the Kerala High Court. Similar question was posed in the Gujarat High Court and it was :

> "What should be the quantum of wages that has to be paid to prisoners who are asked to do labour in jails and what should be the approach to payment of wages to such prisoners ?"

The Full Bench of the Gujarat High Court noted that a Division Bench of that High Court by an earlier judgment dated 19-9-1983 had determined that the prisoners are to be paid wages at the minimum wage rates fixed for workers in similar industrial organizations, but with certain deductions to be made therefrom. The Full Bench said that there was only one item of deduction which was relevant and that was the monetary equivalent of the food, clothing and other facilities provided to prisoners at State expense. In fact, this was the controversy which caused reference to the Full Bench. After discussing various aspects on the matter, the Full Bench of the Gujarat High Court gave the following direction :

> "Hence we hold on the question referred to us that the prisoner is entitled to reasonable wages for the work done. Such reasonable wages is determined with reference to wages paid in similar industry elsewhere. Such payment must be made without any deduction for the food and clothing supplied to such prisoner. The question referred is answered accordingly. This will not go back to the Division Bench."

The appeal filed by the State of Gujarat was directed to be heard along with the earlier appeal filed by the State of Kerala.

58. The State of Rajasthan similarly felt aggrieved from the judgment of the Division Bench of the Rajasthan High Court dated 27-4-1994 and has come up to this Court in appeal. By the impugned judgment, the High Court upheld the decision of the learned Single Judge directing the State Government to pay wages to the prisoners as under :

> "Rs. 14 per day to skilled convict labour, Rs. 12 per day to semi-skilled convict labour, and Rs. 9 per day to non-skilled convict labour from the date of this order. This amount will be subject to modification, of course on the higher side, after the aforesaid exercise is done by the State Government and the Rules are suitably amended."

59. In the meantime various writ petitions came to be filed in this Court on the issues involved in the appeals filed by the States of Kerala, Gujarat and Rajasthan. All these were directed to be heard together. By order dated 14-11-1991, this Court noticed that the question involved in these matters was very important and a substantial question of law arose. It, therefore, directed notices to be issued to the Union of India and to all State Governments and Union Territories. Notice was also directed to be served on the Attorney General for India. By order dated 8-4-1997, notice was also directed to be issued to the National Human Rights Commission. On our request, Mr. Kapil Sibal, Senior Advocate, appeared as amicus curiae.

60. We may also note two decisions, one of the Himachal Pradesh High Court and the other of the Andhra Pradesh High Court. In Gurdev Singh v. State of H.P. (AIR 1992 HP 76 : 1992 Cri LJ 2542 (HP)) the Division Bench of the Himachal Pradesh High Court held that prisoners were entitled to minimum wages as prescribed under the Minimum Wages Act, 1948 and no deduction is permissible from the wages on account of maintenance of the prisoners in jails. It is not clear if the State of Himachal Pradesh filed any appeal against the judgment but the State has certainly opposed grant of minimum wages to prisoners in the affidavit filed in pursuance of notices issued by this Court in the present case.

61. The Andhra Pradesh High Court, however, took a different view. In Poola Bhaskara Vijayakumar v. State of A.P. (AIR 1988 AP 295 : (1988) 1 LLN 85) a direction was sought to the authorities to pay prisoners wages for their work. It was submitted that extraction of work by the State from the prisoners convicted of rigorous imprisonment without paying for such work was contrary to the mandate of Article 23 of the Constitution. It was, thus, submitted that there was violation of Article 23 of the Constitution. The High Court disagreed with the Kerala High Court but then said that wages could be justified under Article 21 of the Constitution. The Court said that Article 23 should be held to be more a prohibition directed against the social practices of one member of the society against another rather than a prohibition against the State. A prisoner in serving out his sentence and performing hard labour attached to his sentence of rigorous

imprisonment cannot be said to be doing any service for any public purpose. The Court considered in detail the scope of Article 23 of the Constitution. The Court gave the answer in the negative and said that in the case of rigorous imprisonment with hard labour attached to it it did not amount to extracting forced labour from the prisoners and was not contrary to Article 23.

62. Three cases of this Court have been relied on by the High Courts of Kerala, Gujarat, Rajasthan and Himachal Pradesh giving interpretation to Article 23 of the Constitution. These are People's Union for Democratic Rights (PUDR) v. Union of India ((1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473), Sanjit Roy v. State of Rajasthan ((1983) 1 SCC 525 : 1983 SCC (L&S) 217) and Olga Tellis v. Bombay Municipal Corpn. ((1985) 3 SCC 545). None of these cases, however, dealt with the right of the prisoners undergoing imprisonment with hard labour. The first two cases considered the question of payment of wages at a rate lower than the minimum wages fixed under the Minimum Wages Act, 1948 to workers employed in various projects and said that that was violative of Article 23 of the Constitution. The third case considered the right of pavement, basti and slum-dwellers of Bombay city on the touchstone of Article 21 of the Constitution.

I. Pleas of the State Governments

63. States have strongly opposed the right of the prisoners to claim minimum wages under the Minimum Wages Act. They say the prisoners have no right to claim wages at all except those provided under the provisions of the Prisons Act, 1894 and the Rules made thereunder and non-payment of wages to prisoners undergoing sentence of imprisonment with hard labour could not be violative of Article 23 of the Constitution. In support of the submission, the States have referred to the Constitutions of various countries and to the Universal Declaration of Human Rights and Covenants on Civil and Political Rights. The states are, however, agreed that the prisoners are entitled to certain wages as prescribed but only by way of incentive/bonus/honorarium/gratuity/reward/stipend or the like. The amount so paid and by whatever name called has to bear some reasonable nexus to the work performed by the prisoners and wages cannot be arbitrary to be paid as a dole or as a pittance. But then the States also say that they are considering upward revision of wages to the prisoners to bring them to a reasonable level for the work done by them subject to deductions for food, clothing and other facilities provided to the prisoners. The Central Government in its affidavit submitted that the All-India Committee on Jail Reforms under the Chairmanship of Justice A.N. Mulla (which functioned during 1980-83) had expressed its view that linking the rates of wages payable to the prisoners with the prevailing commercial wage rates is impractical and had further recommended that the prisoners should be paid fair, adequate and equitable wages in proportion to the skill required for the product/job/service and the satisfactory performance of the prescribed tasks.

64. In the appeal filed by it, the State of Kerala questioned the very order of the High Court in fixing flat rate for a prisoner doing hard labour. It said that the High Court was not correct in assuming that wages of prisoners should be fixed on the basis of employer-employee relationship. The State is providing work to the prisoners only under a statutory liability. The amount of Rs. 8 per day fixed by the High Court is an enhancement of 500% over the prevailing rates involving record expenditure of Rs. 20 to 25 lakhs affecting the development programme in the State. It was submitted that the prevailing rates should be allowed to be continued and opportunity be given to the State to fix appropriate rates as early as possible. In the additional affidavit filed by the Director General of Police (Intelligence), Kerala it was stated that the State Government had constituted the Jail Reforms Committee which had recommended that local minimum wages available for similar outside labour may be paid to the prisoners after deducting the average per capita maintenance cost

of the inmates and that the State was considering the recommendations so made. It was submitted that the State Government was not against enhancing the wages given to the prisoners but there were financial constraints and that any decision to enhance the wages paid to the prisoners of a scale analogous to the minimum wages payable outside would result in serious financial commitment to the Government, which is already spending substantial funds for the maintenance of the prisoners. It was submitted that the Government had no hesitation to sanction a reasonable increase in the wages paid to the prisoners.

65. It is not necessary to detail various contentions raised by the State Governments to justify their stand. Broadly, they say wages are given to the prisoners for the purpose of :

1. (a) offering incentive and stimulus for effect, work and industry;

(b) making prison work purposive and meaningful;

(c) developing a sense of self-responsibility and self-respect amongst the inmates;

(d) enabling prisoners to purchase their sundry daily extra requirements from the prison canteen; and

(e) helping inmates to effect saving for their post-release rehabilitation and also for extending economic help to their families.

(f) Payment effected should not be compared to the kind of wages paid outside but it should be seen as payment for learning skills and therefore only as stipend.

66. We are not holding that prisoners doing hard labour are entitled to minimum wages under the Minimum Wages Act and in view of our directions to the States to fix equitable wages for the prisoners, the States would certainly be considering all the relevant circumstances while fixing equitable wages.

II. Stand of the National Human Rights Commission, the European Convention on human Rights and the United Nations on prison labour

67. While the States are concerned with the revenue and payment of wages to the prisoners is rather a secondary consideration for them, we have to look to the National Human Rights Commission (NHRC) for its views as the Commission has studied the problem of prisons in the country in depth.

68. Basing its study on the recommendations of the Mulla Committee, the aforesaid National Human Rights Commission (NHRC) circulated the Indian Prisons Bill, 1996. Clause 11.21 of the Bills is relevant for our purpose and it is as follows :

"11.21 The question of fixing rates of wages in prisons is, no doubt, a complex job. For obvious reasons, prisoners cannot be given the same rates of wages as are given in the private sector or in a public undertaking. Linking rates of wages of prisoners with commercial wage rates presents many practical difficulties. We are of the view that prisoners should be paid fair, adequate and equitable wages in proportion to the skills required for the product or job or service and the satisfactory performance of the prescribed tasks. While fixing such fair, adequate and equitable wage rate, the minimum wage rate for agriculture, industry, etc., as may be prevalent in each State

> and Union Territory should be taken into account. Units of work prescribed for such minimum wage should also be taken into consideration. The average per capita cost of food and clothing on an inmate should be deducted from the minimum wage and the remainder should be paid to the prisoner. We consider that this would be a fair and equitable basis for fixing wage rates in prisons."

69. NHRC if of the view that while fixing fair, adequate and equitable wage rate for the prisoner, the minimum wage rate for agriculture, industry, etc., as may be applicable in the State and the Union Territory be taken into account and from this average, per capita cost of food and clothing on an inmate should be deducted from the minimum wage and the remainder should be paid to him. According to NHRC, this would be a fair and equitable basis for fixing wage rates for prisoners. Mr. Rajeev Dhavan, Senior Advocate who appeared for NHRC proposed that

> (a) a wage-fixation body be created to fix the equitable recompense of prisoners.
>
> (b) a body may be created to determine the distribution of equitable recompense between sums for dependents and sums for future use, and invested accordingly.
>
> (c) a Grievance Committee be established which will examine complaints in respect of prisoners in respect of wages, wage-determination, deductions and working conditions.

This is consistent with the jurisprudence enunciated earlier that procedural provisions should strengthen substantive entitlements.

70. I may, however, notice that lower wage for inmates of prisons is admissible under the European Convention on Human Rights. Article 4 of this Convention provides as under :

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour.
>
> 3. For the purposes of this article, the term 'forced or compulsory labour' shall not include :
>
> (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
>
> (b) any service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
>
> (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
>
> (d) any work or service which forms part of normal civic obligations."

Article 5 guaranteed liberty of the person, and in particular provided guarantees against arbitrary arrest or detention. It seeks to achieve this object by excluding any form of arrest or detention

without lawful authority and proper judicial control. Article 4(2) provides that no one shall be required to perform forced or compulsory labour but Article 4(3) excludes from the term "forced or compulsory labour" any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of the Convention or during the conditional release from such detention.

71. In the case of Twenty-one Detained Persons against the Federal Republic of Germany decided on 6-4-1968 by the European Convention on Human Rights, the main grievance of the applicants was that they were refused adequate remuneration for the work which they had to perform during the detention and that no contributions under the social security system were made for them in this respect by the prison authorities. The Commission noted a particular complaint which said that "the prisoners were compelled to work at ridiculous salaries which enabled the Public Treasury to extract fortunes from the detainees, namely, profiting from the difference between the salaries and the market value of their work". The Commission examined the provisions of Article 4 and held that in the present applications the detention concerned was imposed by the competent courts in a lawful manner and work performed during this detention was, therefore, covered by Article 4(3)(a), taken in conjunction with Article 5. The Commission further observed that Article 4 did not contain any provision concerning the remuneration of prisoners for their work and, consequently, it said that it had in its constant jurisprudence rejected as being admissible any applications of prisoners claiming higher payment for their work. The Commission also observed that there was a study made by the United Nations which was published in the basic documents of 1955 on prison labour. The study revealed that the amounts paid to the working persons were, with very few exceptions, extremely small, and that normally prisoners had no legal right to remuneration which is only paid as a "reward" or "gratuity" subject to regulations governing the disposition of the money and which may, in certain circumstances, be withdrawn as a disciplinary measure. Commenting on this study, the Commission found that

> "the form of prison labour of which the applicants complain, whatever its merits or demerits from a penological point of view, clearly appears to fall within the framework of work 'normally' required from prisoners within the meaning of Article 4 para (3)(a) of the European Convention".

72. In the study conducted by the United Nations on prison labour, published in 1955, there is a chapter on "Remuneration of Prisoners, Regulations Governing the Expenditure of Income and Aid to Dependants". The study referred to various practices prevailing in 22 countries which had submitted information on the amounts of remuneration paid to prisoners including that by India. Para 240 refers to the system prevailing in India, which is as under :

> "240. No uniform system or regulations for remuneration have yet been instituted in India. In some States, payments are made at a fixed percentage of wages earned for comparable work by free employees; in others only gratuities are paid. At an experimental extra-mural rehabilitation project in the State of Uttar Pradesh, prisoners from several jails are employed for periods up to eight months in constructing an irrigation dam on Chandraprabha River. Living under conditions closely approximating those of free workers, the prisoners earn an average of Rs. 1/8 per day, part of which may be spent on minor purchases and part of which may be sent to dependants. Only the costs of three meals daily are deducted by the State."

The study noticed that virtually all countries with systems of remuneration made regulations

governing the disposition of payments to prisoners. Aside from the special rules for those earning the equivalent of free wages, prisons in the majority of non-English-speaking States required the division of remuneration in specified proportions of at least two, three or four shares. It said that five main purposes were served by such policies of allocation of remuneration and these were -

(a) provision for spending money;

(b) savings for release;

(c) aid to dependants;

(d) board and room or other institutional expenses; and

(e) indemnities and/or court fees.

73. Para 181 of the study on prison labour is as under :

> "181. That prisoners should be remunerated for their work is a principle accepted by most contemporary penologists. Differences of opinion on legal and ethical considerations, and on procedural problems do not obscure the fact that definite benefits are felt to accrue from carefully planned prisoner-remuneration schemes. In addition to stimulating the offender's industry and interest, money can be earned, at the very least, for the purchase of approved articles and for the accumulation of a savings fund against the day of release. If payments are more than minimal, some possibility exists for making at least token contributions to the needs of dependants, for paying indemnities and other legal obligations, and for reimbursing the State for the expense of incarceration. If inmates can earn wages approximating those of free workers, not only they make adequate payments for their moral and legal obligations, but they will be more nearly sharing in the normal economic functions of the society to which the majority will eventually return."

74. After the study was made by the United Nations on prison labour, Standard Minimal Rules for the treatment of the prisoners were adopted. These Rules provide for the prisoners (1) proper accommodation, (2) medical facilities, (3) clothing and bedding, (4) books, etc. These Rules also stated that :

> "58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society, the offender is not only willing but able to lead a law-abiding and self-supporting life.
>
> 59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
>
> 65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit

them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility."

For the work to be taken from the prisoners and remuneration to be paid, paras 71, 72, 73 and 76 may be referred to, which are as under :

"71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible, the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside the institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the Government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release, education and recreation."

75. It is not disputed that wages are being provided to the prisoners in all the States in the country except the State of Bihar. There is, however, no opposition from any quarter that a certain amount of wages are to be given to the prisoners doing work in the prison. If we examine the rates of wages presently fixed in various States, these vary from Rs. 1.50 to Rs. 6.00 per day for an unskilled worker and Rs. 2.50 to Rs. 8.00 per day for a skilled worker. The amount of wages so paid shocks the conscience. In Pondicherry, it is in terms of a few paise a day and it could be said that in fact no payment is being made. The amounts so paid these days would appear to be rather a pittance and certainly need upward revision.

76. It is not, therefore, that the prisoner is entitled to the minimum wage fixed under the Minimum Wages Act. But then there has to be some rational basis on which wages are to be paid to the prisoners.

77. Since the claim of the prisoners for payment of wages and also at the rates fixed under the Minimum Wages Act is based on Article 23 of the Constitution and that of the States on the Prisons Act, we may as well consider these provisions.

III. The Prisons Act, 1894

78. Under the Seventh Schedule List II (State List) of the Constitution, "prisons" is a State subject. Entry 4 deals with "prisons" and it reads as under :

> "4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions."

79. The Prisons Act, 1894 regulates "jail". There are various State amendments to this Act though those amendments are not of any significance for our purpose. The Act defines a criminal prisoner, a convicted criminal prisoner and a civil prisoner. The Act provides as to how the prisons are to be maintained; the duties of the officers manning the prisons; discipline of prisoners; food, clothing and bedding of civil and unconvicted criminal prisoners; health of prisoners; prisoners' offences and punishment of such offences; etc. Chapter VII of the Act deals with employment of the prisoners. There is no provision in the Act for payment of wages to criminal prisoners sentenced to hard labour. Only the civil prisoners are entitled to receive whole of the earnings except where the implements used by them are supplied by the prison authorities, a certain amount is deducted from their earnings. Section 59 gives power to the State Government to make rules. Clauses (11) and (12) of Section 59 empowers the State Government to make rules for the provisions of food and employment etc. of the prisoners. It would, therefore, appear that when wages are paid to the prisoners doing hard labour, it is because of rules or other government orders.

IV. Constitution (Article 23)

80. How Articles 23 and 24 took the present shape, we may refer to the study by B. Shiva Rao in his book The Framing of India's Constitution. The subject was first considered in the Sub-Committee on Fundamental Rights and the provisions against exploitation as finally approved by the Sub-Committee were reproduced as clause 15 in the draft report as follows :

> "15. (1)(a) Slavery,
>
> (b) traffic in human beings,

(c) the form of forced labour known as begar,

(d) any form of involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation. - Compulsory service under any general scheme of education does not fall within the mischief of this clause.

(2) Conscription for military service or training, or for any work in aid of military operation, is hereby prohibited.

(3) No person shall engage any child below the age of 14 years to work in any mine or factory or any hazardous employment."

81. This clause 15 was then considered by the Advisory Committee and the drafted provisions as adopted by the Advisory Committee were reproduced as clauses 11 and 12 in its interim report which were as follows :

"11. (a) Traffic in human beings, and

(b) forced labour in any form including begar, and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation. - Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation. - Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour."

82. These clauses were then discussed in the Constituent Assembly and finally came up for discussion as Articles 17 and 18 as prepared by the Drafting Committee in the Draft Constitution and as follows :

"17. (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such service, the State shall not make any discrimination on the ground of race, religion, caste or class.

18. No child below the age of fourteen years shall be employed to work in any

factory or mine or engaged in any other hazardous employment."

83. Now, when Article 17 was taken up for discussion, certain amendments were moved by the Members. Relevant for our purposes are - (1) "That in clause (2) of Article 17, after the words 'caste or class' the words 'and shall pay adequate compensation for it' be inserted." (2) "That in clause (2) of Article 17, for the word 'public' the words 'social or national' be substituted." (3) "That in clause (2) of Article 17, after the words 'discrimination on the ground' the word 'only' be added." In reply, Dr. B. R. Ambedkar said :

> "Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word 'only' in clause (2) of Article 17 after the words 'discrimination on the ground'. The rest of the amendments, I an afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept, one is by Prof. K. T. Shah introducing the word 'devadasis'! Now I understand that his arguments for including 'devadasis' have been replied to by other Members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.
>
> With regard to the amendment of my honourable friend, Mr. H. V. Kamath, he wants the words 'social and national' in place of the word 'public'. I should have thought that the word 'public' was wide enough to cover both 'national' as well as 'social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that that is the correct attitude to take.
>
> With regard to the amendment of my honourable friend, Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of Article 17, a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called 'hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.
>
> In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in sub-clause (2) is this : that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands."

Articles 23 and 24 in the Constitution are now as under :

> "23. Prohibition of traffic in human beings and forced labour. - (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.
>
> 24. Prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

84. The word "begar" is of Indian origin and is well understood in ordinary parlance. It is compulsory or involuntary labour with or without payment. This Court has approved the meaning of begar as accepted by the Bombay High Court in S. Vasudevan v. S. D. Mital (AIR 1962 Bom 53 : 63 Bom LR 774). In S. Vasudevan case (AIR 1962 Bom 53 : 63 Bom LR 774) there was challenge to the constitutional validity of the Essential Services Maintenance Ordinance, 1960 prohibiting bank strikes, and one of the contentions raised was that the Ordinance made the petitioners work against their will at the threat of penal consequences and that amounted to a form of forced labour which clause (1) of Article 23 of the Constitution prohibited and that thus the Ordinance was bad in law as it contravened the provisions of Article 23(1). The High Court did not agree and said :

> "This contention is also without any force. It omits to notice the force of the word 'similar' occurring in the clause. That clause prohibits (i) traffic in human beings (ii) begar and (iii) other similar forms of forced labour. It would be seen that every form of forced labour is not prohibited by the clause. In fact, clause (2) of Article 23 permits the State to impose on the citizens compulsory service for public purposes. What is prohibited by the first clause is imposing on the citizens forced labour which is similar in form to begar. It is true that begar is not defined but it is a well-understood term which means making a person work against his will and without paying any remuneration therefor. Molesworth at p. 580 gives the meaning of begar as 'labour or service exacted by a Government or a person in power without giving remuneration for it'. In Wilson's Glossary the meaning of the word is given as : 'Forced labour, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given.' In our opinion, therefore, to bring the case within the mischief which clause (1) of Article 23 provides against, it must be established that a person is forced to work against his will and without payment. Such is not the case here. Even assuming that the threat of penal consequences provided in the Ordinance would have the effect of making the petitioners work against their will, it is beyond doubt that it was not intended to make them work without any payment; on the other hand, they would be getting their full remuneration for the work they would be doing."

This dictum was approved by this Court in the case of People's Union for Democratic Rights v. Union of India ((1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473).

85. Since a great deal of reliance has been placed on the decision of this Court in People's Union for Democratic Rights v. Union of India ((1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC

1473). I may refer to it in somewhat greater detail. In this case, the Court said that many of the fundamental rights enacted in Part III of the Constitution operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found, inter alia, in Articles 17, 23 and 24. Article 23 with which we are concerned is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human being and begar and other similar forms of forced labour" practised by anyone else and the article strikes at such practices where they are found as its sweep is wide and unlimited. The Court said that the reason for enactment of this provision in the chapter on fundamental rights is to be found in the socio-economic conditions of the people at the time when the Constitution came to be enacted. The Court went into the question as to why the Constitution-makers thought it prudent to include a provision like Article 23 in the chapter of fundamental rights. There is a good deal of discussion in paras 12, 13 and 14 of the judgment as to the true scope and meaning of the expression "traffic in human being and begar and other similar forms of forced labour". It is, thus, clear that this Court in unmistakable terms has said that every form of forced labour, begar or otherwise is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this article if it is forced labour, i.e., labour supplied not willingly but as a result of force or compulsion. This Court was considering the argument on behalf of the Union of India which laid some emphasis on the word "similar" and contended that it was not every form of forced labour which was prohibited by Article 23 but only such form of forced labour as was similar to "begar" and since "begar" means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words "other similar forms of forced labour". The Court said that this contention sought to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and was, in its opinion, not well founded. Thus, this Court has held that under Article 23, no one shall be forced to provide labour or service against his will even though it be under a contract or service. Payment of full wages when labour exacted is forced will attract the prohibition contained in Article 23. It will not, therefore, be correct to say that this judgment merely holds that where a person provides labour or service to another on remuneration which is less than the minimum wages, the labour or service provided by him falls within the scope and ambit of the words "forced labour" under Article 23. As a matter of fact, what the judgment holds is where labour is forced on a person then irrespective of the fact that he is paid minimum remuneration as may be fixed or even higher than that, Article 23 will nevertheless be violated. Any amount of remuneration paid to a person will be immaterial if labour is forced upon him. Can it, therefore, be said that the sentence of rigorous imprisonment is unconstitutional being violative of clause (1) of Article 23 because the prisoner is forced to do hard labour and is saved only because of clause (2) of this article ? Can it be said that when a prisoner is made to do hard labour, being part of his sentence, it is in the nature of compulsory service imposed by the State for public purpose ? My answer to both these questions is in the negative. Article 23 has no role to play. Here, a prisoner is forced to do hard labour as part of his punishment for the crime committed by him and this punishment is imposed upon him by a court of competent jurisdiction in accordance with law.

86. If we further analyse the discussions of the Constituent Assembly on Article 23, it is significant

that it was aimed at prohibiting abuses from forced labour which ryots were compelled to render to big zamindars or to royalty of the erstwhile Indian States. In this connection, a part of the speech of Shri Raj Bahadur in the Constituent Assembly may be of some relevance :

> "Mr. Vice-President, sir, begar like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this begar, this extortion of forced labour, has meant to the downtrodden and dumb people of the Indian States. If the whole story of this begar is written, it will be replete with human misery, human suffering, blood and tears. I know how some of the princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the downtrodden labourers and dumb ignorant people for the sake of their pleasure."

87. At this stage, we may also note the relevant provisions in the Constitutions of U.S.A., Japan and West Germany and also the Universal Declaration of Human Rights and Covenants on Civil and Political Rights.

U.S.A.

> "(1) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Japan

Article 18 of the Japanese Constitution, 1946, provides :

> "No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited."

West Germany

> "2. No one may be compelled to perform a particular kind of work except within the framework of an established general compulsory public service equally applicable to everybody.
>
> 3. Forced labour shall be admissible only in the event of imprisonment ordered by court."
>
> Universal Declaration
>
> (A) Article 4 of the Universal Declaration of Human Rights says :
>
> "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."
>
> Covenant on Civil & Political Rights
>
> (B) Article 8 of the Covenant on Civil and Political Rights, 1966 says :

"1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) no one shall be required to perform forced or compulsory labour.

(b) Para 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include :

(i) Any work or service, not referred to in sub-para (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objections;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work of service which forms part of normal civil obligations."

88. We have also noticed somewhat similar provisions in the Constitutions of Burma, Cyprus, Jordan, Kenya, Korea, Malaysia, Mauritius, Nepal, Pakistan and the Philippines where forced or compulsory labour is valid while undergoing imprisonment as a punishment for offences committed by the prisoners.

89. It was stressed that Article 23, when it originally stood, contained the words "except as a punishment for crime whereof the party shall have been duly convicted" but these words have since been omitted. On this, arguments were based that a prisoner is entitled to wages for work done by him otherwise it will be violative of the article. I do not think the matter is as simple as that. This is no way to interpret a provision when there is no ambiguity. Superfluous and unnecessary words are avoided in drafting a statute when otherwise language used gives full meaning to the provision. Article 23 contains prohibition. What it prohibits is, as is relevant for our purpose, "begar" and other similar forms of forced labour. Now, it cannot be said that a prisoner sentenced to undergo imprisonment with hard labour would be doing "begar" if prison authorities put him to hard labour. It cannot also be "other similar forms of forced labour". During the debates of the Constituent Assembly or of any of its committees it was never suggested, even remotely, that the sentence of rigorous imprisonment is akin to "begar" or other similar kind of forced labour. This Court has rightly applied the meanings of all these words to cases where labourers are paid at a rate lower than that fixed under the Minimum Wages Act. In those cases, labourers though entitled to minimum wages, were forced to accept remuneration at a lower rate because of poverty, unemployment or other similar circumstances. Here the prison authorities are obliged to put the prisoners to hard work otherwise they will be disobeying the court mandate and may be liable for the court's wrath. Now if the prisoners are not paid can the authorities be accused of violating Article 23 of the Constitution ?

Would they be committing any offence punishable in accordance with law ? In this connection, we may refer to Section 374 IPC which prescribes that whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both. It cannot be said that prison authorities are unlawfully "compelling the prisoners to do the work". The issue may be approached from a different angle as well. Prison authorities are obliged to put the prisoners to work under the orders of the court and at the same time bound to pay wages to the prisoners because of the prohibition of Article 23. It is really a paradoxical situation. Both work and payment must go together whether the authorities have funds to pay or not. If they have no funds and they are not putting the prisoner to work, they would be violating the court's order. If, on the other hand, they put the prisoner to work and have no funds to make payment, they are violating Article 23. Article 23 is to be given purposive interpretation. No one had questioned the constitutional validity of the Prisons Act or the Rules framed thereunder or the punishment of rigorous imprisonment which means hard labour. Here, hard labour is a part of the sentence and not of any contract. Nobody ever said that during the pre-constitutional period, the sentence of imprisonment with hard labour was "begar" or "other forms of forced labour".

90. To me it appears, there will be no violation of Article 23 if prisoners doing hard labour when sentenced to rigorous imprisonment are not paid wages. Wages are payable only under the provisions of the Prisons Act and the rules made thereunder. Though prison reforms are a must and prisoners doing hard labour are now being paid wages, but the message must be loud and clear and in unmistakable terms that crime does not pay. This the prisoners and the potential offenders must realise. We cannot make prison a place where the object of punishment is wholly lost.

91. The next question is as to how wages payable to the prisoners are to be used by him and how these are to be fixed. The Rules of certain States provide and this was also commended by Mr. Rajeev Dhavan that one-third of the wages should be paid to the prisoner for his personal needs while undergoing sentence, one-third to his family and one-third be credited to his account to be paid at the time of his release. That sounds quite good. But then fixing wages for the prisoners the State has to show equal concern for the victim and the victim's family. To this end, the subject of victimology has gained ground these days.

V. Victimology

92. I do no think it is necessary for us to comment on various theories of sentence like deterrent, retributive and reformation or rehabilitative. The reformative theory is certainly important but too much stress to my mind cannot be laid on it that basic tenets of punishments altogether vanish. In this connection, a Constitution Bench decision of this Court in the case of Jagmohan Singh v. State of U.P. ((1973) 1 SCC 20 : 1973 SCC (Cri) 169) which considered the validity of the death sentence may be of some relevance. The relevant part of the judgment is as under : (SCC pp. 28-29, paras 13-14)

> "13. Reference was made by Mr. Garg to several studies made by Western scholars to show the ineffectiveness of capital punishment either as a deterrent or as appropriate retribution. There is large volume of evidence compiled in the West by kindly social reformers and research workers to confound those who want to retain the capital punishment. The controversy is not yet ended and experiments are made by suspending the death sentence where possible in order to see its effect. On the other hand most of these studies suffer from one grave defect namely that they consider all

murders as stereotypes, the result of sudden passion or the like, disregarding motivation in each individual case. A large number of murders is undoubtedly of the common type. But some at least are diabolical in conception and cruel in execution. In some others where the victim is a person of high standing in the country society is liable to be rocked to its very foundation. Such murders cannot be simply wished away by finding alibis in the social maladjustment of the murderer. Prevalence of such crimes speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval by the society.

14. We have grave doubts about the expediency of transplanting Western experience in our country. Social conditions are different and so also the general intellectual level. In the context of our Criminal Law which punishes murder, one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the death penalty. We have not been referred to any large-scale studies of crime statistics compiled in this country with the object of estimating the need of protection of the society against murders. The only authoritative study is that of the Law Commission of India published in 1967. It is its Thirty-fifth Report. After collecting as much available material as possible and assessing the views expressed in the West both by abolitionists and the retentionists the Law Commission has come to its conclusion at paras 262 to 264. These paragraphs are summarized by the Commission as follows at p. 354 of the Report :

'The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention. No single argument for abolition or retention can decide the issue. In arriving at any conclusion on the subject, the need for protecting society in general and individual human beings must be borne in mind.

It is difficult to rule out the validity of, or the strength behind, many of the arguments for abolition. Nor does the Commission treat lightly the argument based on the irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment, and the strong feeling shown by certain sections of public opinion in stressing deeper questions of human values.

Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment.

Arguments which would be valid in respect of one area of the world may not hold good in respect of another area, in this context. Similarly, even if abolition in some parts of India may not make a material difference, it may be fraught with serious consequences in other parts.

On a consideration of all the issues involved, the Commission is of the opinion, that capital punishment should be retained in the present state of the country.'"

93. Great stress is being laid these days on the rights of the victims or his family in the case of the

victim's death. According to Mr. Dhavan, sums granted to prisoners are de minimus and cannot support a rehabilitative victimology. Reference was made to Section 357 of the Code of Criminal Procedure which provides for payment of compensation to the victim or on his death, to his family. NHRC does not seem to have collected any data as to how Section 357 of the Code is being put to use. Presently, we find there is a fitful practice of making compensation orders under the section.

94. In recent years, the right to reparation for victims of violation of human rights is gaining ground. The United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights (see annexure)

95. In the United States of America stress has now been laid on victim-impact evidence. In Payne v. Tennessee (3 S Ct 2597) the Supreme Court of the United States by a majority of 6 : 3 upheld the admission during capital sentencing of evidence relating to the victim's personal characteristics and the emotional impact of crime on the victim or his family or friends. Whether such an approach is correct or otherwise is not the question we are considering here. It merely shows the victim is an important factor in a criminal trial.

96. In Palaniappa Gounder v. State of T.N. ((1977) 2 SCC 634 : 1977 SCC (Cri) 397 : AIR 1977 SC 1323) this Court was considering the applicability of Section 357 of the Code of Criminal Procedure. In this case. The accused were sentenced to death. On appeal filed by the accused, the High Court reduced the death sentence to that of imprisonment for life. However, while reducing the sentence, the High Court imposed a fine of Rs. 20,000 on the accused and directed that out of the fine, if realised, a sum of Rs. 15,000 should be paid to the son and daughters of the deceased under Section 357(1)(c) of the Code. This order came to be passed on an application filed by the son and daughters of the deceased praying that the accused be asked to pay them, as heirs of the deceased, compensation of a sum of Rs. 40,000 for the death of their father. Though the application filed was one under Section 482 of the Code, this Court said that it could be treated as one under Section 357 of the Code which provisions specifically dealt with such a case. Though upholding the order of the High Court in imposing fine and directing payment of compensation to the heirs of the deceased, the Supreme Court reduced the sentence of fine to Rs. 15,000 and directed that the fine so recovered shall be paid to the heirs of the deceased. The Court said that the provisions of clauses (a), (b) and (d) of Section 357 were inapplicable and clause (c) of Section 357(1) was relevant. This Court, however, said that though it was legitimate to sentence the accused to fine as well "but legitimacy is not to be confused with propriety and the fact that the court possesses a certain power does not mean that it must always exercise it". It said that the power to combine the sentence of death with a sentence of fine is sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty, a sentence of find is hardly calculated to serve any social purpose. The approach of this Court in the present-day context needs further thought. However, I feel that the observations of this Court are to be confined to a case where the accused has been sentenced to death.

97. In Sarwan Singh v. State of Punjab ((1978) 4 SCC 111 : 1978 SCC (Cri) 549 : AIR 1978 SC 1525) this Court said that in awarding compensation, it was necessary for the court to decide whether the case was a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. The Court said that the purpose would not be served if the accused was not able to pay the fine or compensation for imposing a default sentence for non-payment of fine would not achieve the object. The Court referred to its earlier decision in Palaniappa Gounder v. State of T.N. ((1977) 2 SCC 634 : 1977 SCC (Cri) 397 : AIR 1977 SC 1323) and said that it was the duty of the court to

take into account the nature of crime, injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation.

98. In Hari Singh v. Sukhbir Singh ((1988) 4 SCC 551 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127) this Court took a different stance. It called upon all the courts to liberalise their power under Section 357 of the Code. It said that power of the courts to award compensation to victims under Section 357, while passing judgment of conviction was nor ancillary to other sentences but in addition thereto and that this power was intended to do something to reassure the victim that he or she was not forgotten in the criminal justice system. In this case, the accused was convicted under Sections 325, 148 and 149 IPC. Power of speech of the victim was impaired permanently. The High Court granted compensation of Rs. 2500 which this Court said would be payable by each of the accused having regard to the nature of injuries suffered by the victim. The Court found that the accused had means and ability and were also not unwilling to bear the additional financial burden. The award of compensation was enhanced to Rs. 50,000.

99. In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

100. Black's Law Dictionary defines "reparation" as :

> "Payment for an injury or damage; redress for a wrong done. Several States have adopted the Uniform Crime Victims Reparation Act. Certain federal statutes also provide for reparation for violation of the Act; e.g., persons suffering losses because of violations of the Commodity Futures Trading Act may seek reparation under the Act against the violator.
>
> Payment made by one country to another for damages during war."

101. Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property (restitution), these being types of reparation which might be described as practical or material. The term can also be used to describe more intangible outcomes, as where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeated, thus repairing the psychological harm suffered by the victim as a result of the crime.

102. In England, a recent enactment has been made called the Prisoners' Earnings Act, 1996. It empowers the prison administration to make deduction from the earnings of the prisoner of an amount not exceeding the prescribed limit. This deduction does not include certain statutory deductions like income tax and payments required to be made an order of a court. The amount so deducted shall be applied for :

(a) the making of payments (directly or indirectly) to such voluntary organizations concerned with victim support or crime prevention or both as may be prescribed;

(b) the making of payments into the Consolidated Fund with a view to contributing towards the cost of the prisoner's upkeep;

(c) the making of payments to or in respect of such persons (if any) as may be determined by the Governor to the dependants of the prisoners in such proportions as may be so determined; and

(d) the making of payments into an investment account of a prescribed description with a view to capital and interest being held for the benefit of the prisoner on such terms as may be prescribed.

103. The question then arises for consideration is if Article 300-A bars payment of any compensation to the victim or his family out of the earnings of the prisoner. To bar any such objection to the validity of deduction, rules can be framed under the Prisons Act or otherwise. When a body is set up to consider the amount of equitable wages for the prisoners, a prison fund can be created in which a certain amount from the wages of the prisoners be credited and out of that an amount be paid to the victim or for the upkeep of his family, as the rules may provide for the purpose. Creation of a fund, to my mind, is necessary as any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in our country.

104. To conclude, while agreeing with the directions issued by Thomas, J., I am of the view that putting a prisoner to hard labour while he is undergoing a sentence of rigorous imprisonment awarded to him by a court of competent jurisdiction cannot be equated with "begar" or "other similar forms of forced labour" and there is no violation of clause (1) of Article 23 of the Constitution. Clause (2) of Article 23 has no application in such a case. The Constitution, however, does not bar a State, by appropriate legislation, from granting wages (by whatever name called) to prisoners subject to hard labour under the courts' orders, for their beneficial purpose or otherwise.